



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/156488

PRELIMINARY RECITALS

Pursuant to a petition filed March 26, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Outagamie County Department of Human Services in regard to Child Care, a hearing was held on May 12, 2014, at Appleton, Wisconsin.

The issue for determination is whether the Department erred in its denial of petitioner's application for child care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Laura Parsley

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Petitioner applied for child care benefits on February 5, 2014.
3. Petitioner also submitted an IRS Schedule K-1 on February 27, 2014 indicating that petitioner is 49% owner of a [REDACTED].

4. As part of the application process, on March 14, 2014 petitioner provided income information including a self-employment income report for a business of which she is part owner. The self-employment income report indicated petitioner as a 49% owner of the business. The self-employment income report indicated net business income of \$50,332.32, and depreciation of \$30,000.
5. On March 10, 2014 the Department informed petitioner that she was denied CC benefits as she was over the income limit for the program.
6. Petitioner appealed.

DISCUSSION

Wis. Stat § 49.155 authorizes the department to operate a child care subsidy program for Wisconsin Works (W-2) recipients and working parents. See also, *W-2 Manual*, 15.2.0. The department has a *Child Care Manual* that provides the specific policies for the program.

To qualify for Childcare Assistance (CC), a parent or “person acting in the place of a parent” must have a low income. Wis. Stat. §49.155(1)(c), & (1m). Specifically, new applicants cannot have income exceeding 185% of the Federal Poverty Level (FPL) and ongoing recipients cannot have income exceeding 200% FPL. *Child Care Manual (Manual)*, Ch. 1, §1.6.2. The available gross income of all household members is considered unless specifically excluded by the Child Care Assistance program rules or policy:

...count all available earned and unearned income except for those sources indicated under the following Disregard and Limited Disregard sections. Include the earned income and adjusted gross self-employment income of all assistance group members, except minors and dependent 18 year olds, unless the minor is living independently. Do not subtract child support paid out.

Id., 1.6.4. The agency determined the petitioner’s self-employment income by looking at her self employment income report that petitioner herself provided. This indicated that she was 49% owner of the business and that the net business income was \$50,332.52, and depreciation was listed by petitioner as \$30,000. Depreciation was correctly added back in to net income. Wis. Stat. §49.155(1m)(c)1. The *Manual* goes on to list types of income that are excluded, such as child support received for a child in the household, at §§1.6.11 – 1.6.14. These provisions may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>. See also, Wis. Admin. Code DCF ch. 201 (March 2009), and §DCF 101.26. The pertinent statute, Wis. Stat. §49.155(1m), cross-references to §49.145(3)(b), which excludes only the federal Earned Income Tax Credit, student financial aid, W-2 checks, and the minor child’s earned income, from available income. In the end, the monthly income of petitioner according to the information she provided is \$3,280.24 based only on the business income. There was also some evidence that petitioner also receives a draw from the business. However I am not considering that as petitioner is clearly ineligible even without the draw.

Currently, 185% of the Federal Poverty Level for two persons is \$2,425 per month. Because the petitioner’s household’s gross monthly income was above this amount, the agency found that she was not eligible for the program.

Petitioner, interestingly, submitted a new self employment report prior to hearing. Petitioner claimed that she provided all incorrect information on the first one and that she is really only 20 percent owner and the depreciation and income number are really completely different. I note that the evidence relating to business ownership appears to contradict a formal K-1 form that I assume was or will be submitted to the Federal IRS with her 2013 taxes. Instead, petitioner wishes me to discount this and her previous report form statement that she signed and believe that she made a mistake. I am extremely skeptical of this

claim and these documents which appear to be business documents pertaining to voting rights. It is hard to tell as only limited pages were provided. But, it does not matter for the purpose of this case because I must only determine whether the Department made an error based on the information it had at the time. It did not. The information provided by petitioner as part of the application clearly leads to an ineligibility determination. Petitioner may reapply and provide all this new information and the Department would be well-founded to seek all appropriate verification of these new income assertions.

CONCLUSIONS OF LAW

The Department did not err in finding petitioner ineligible because the income reports that petitioner provided at application placed her well over the income limit for the program.

THEREFORE, it is ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 12th day of June, 2014

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 12, 2014.

Outagamie County Department of Human Services
Child Care Benefits